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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CAROL QUITMEYER, Defendant.	CR. No. 07-0296 MAG UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE Hearing Date: September 27, 2007 Time: 11:00 a.m. Judge: Hon. Nandor J. Vadas SAN FRANCISCO VENUE

I. INTRODUCTION

On May 15, 2007, the United States filed an Information charging Carol Quitmeyer ("Quitmeyer" or "Defendant") with a violation of Title 36, Code of Federal Regulations, Section 4.23(a)(1), Driving Under the Influence of Alcohol, a Class B Misdemeanor, and a violation of Title 36, Code of Federal Regulations, Section 4.23(a)(2), Operating a Motor Vehicle with a Blood Alcohol Content over 0.08%. Quitmeyer contends that Ranger Michael Hardin ('Ranger Hardin") violated her Fourth Amendment rights by stopping her without reasonable suspicion

that she had been, was presently, or was about to become engaged in criminal activity and therefore all evidence collected after the stop should be suppressed. Defendant's contentions are incorrect and her motion to suppress should be denied. The encounter between Ranger Hardin and Quitmeyer was not a seizure and, even if it was, Ranger Hardin had reasonable suspicion to stop Defendant's car because of the Defendant's erratic driving and the location of the incident.

II. STATEMENT OF FACTS

On January 13, 2007, at approximately 9:41, Ranger Hardin observed a red Volkswagen bearing California license plate 3DCD497 drive past the public parking area and into the serpentine barriers protecting the secured area surrounding the north anchorage of the Golden Gate Bridge. See Declaration of Ranger Michael Hardin, attached hereto as Exhibit A, at ¶ 3. Ranger Hardin then observed the vehicle stop and attempt to turn around. However the driver was unable to execute the turn and instead the vehicle became wedged between the ditch and a barricade. Id. at ¶ 5.

At this point Ranger Hardin approached the vehicle on foot and gave a verbal warning for the driver to stop the vehicle. He also shined his flashlight in the window to attract the driver's attention. Id. at ¶ 8. The driver continued attempting to execute the turn until Officer Hardin made physical contact with the vehicle by knocking on the window. Id. at ¶ 9-10.

Upon contacting the driver, Ranger Hardin observed that the female operator was the sole occupant of the vehicle. He identified the driver using her California Driver's License as Carol Quitmeyer. Id. at ¶ 11. Ranger Hardin observed that Quitmeyer's eyes were bloodshot and that she spoke with a slow tempo. Ranger Hardin asked Quitmeyer if she had been drinking and she stated that she had consumed "a few drinks." Id. at ¶ 12.

Ranger Hardin asked Quitmeyer to exit her vehicle and if she would perform some field sobriety tests to demonstrate her ability to safely operate a vehicle. Id. at ¶ 13. Quitmeyer consented and Ranger Hardin administered several field sobriety tests which Quitmeyer failed. Id. at ¶ 14. Ranger Hardin then placed Quitmeyer under arrest for Operating a Motor Vehicle while Under the Influence of Alcohol or Drugs. Id. at ¶ 15. Quitmeyer was transported to Park

Police Headquarters and advised of her Miranda rights. Quitmeyer opted for a blood draw, rather than an intoxilyzer breath test, so she was transported to the San Francisco County Jail where the blood draw was performed. She was then transported to the Marin County Jail where she was booked with an order to be released when sober. Id. at ¶ 16.

The blood sample provided by Quitmeyer was tested by the Forensic Laboratory Division of San Francisco. The Blood Alcohol Content of the sample was 0.19%. Id. at ¶ 17.

III. ARGUMENT

A. Ranger Hardin's Encounter With Quitmeyer Did Not Rise To The Level Of A Seizure Because It Was Not A Result Of Means Intentionally Applied To Restrain The Suspect.

Defendant claims that Quitmeyer was seized when Ranger Hardin approached and knocked on the window of the vehicle. This contention ignores the fact that at that time Quitmeyer's vehicle was already stuck between a barrier and a ditch. Id. at ¶ 5. As Ranger Hardin states in his Declaration, the vehicle was "rocking" back and forth. Id. at ¶ 9. The car being trapped between these barriers is not a seizure since a seizure must be the result of means intentionally applied. See Bower v. County of Inyo, 489 U.S. 593, 596 (1989); see also United States v. Terry 392 U.S. 1, 19 n. 16 (1968) ("Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.")

In Brower, the Supreme Court discusses the hypothetical situation where a defendant is trapped by a police car that has accidently slipped its breaks and pinned the defendant against a wall. The Court concludes that no seizure has occurred since there cannot be an accidental seizure; it must be a result of intentional action by the government. Similarly here, Quitmeyer getting her car stuck between the security barriers cannot give rise to a seizure since it was not a result of means intentionally applied by Ranger Hardin. Even though Ranger Hardin asked the driver to stop rocking her vehicle, this request was moot since the vehicle was already stuck. Ex. A, at ¶ 5.

Once the vehicle was stuck the encounter that followed was clearly a police-citizen interaction that did not rise to the level of a seizure. As the Court in Morgan v. Woessner, 997 F.2d 1244, 1252 (9th Cir. 1993) stated, there are three types of police encounters under the Fourth Amendment. While a Terry stop and an arrest require some level of suspicion of wrongdoing, the first level, namely consensual police-citizen encounters, does not require any suspicion because it is not a seizure. Id. In such encounters the police officer approaches a citizen and engages in conversation and can even ask to see identification. See I.N.S. v. Delgado, 466 U.S. 210, 216 (1984); Florida v. Rodriguez, 469 U.S. 1, 5-6 (1984). These interactions can be for the purpose of gathering information or providing assistance, both essential police actions. See U.S. v. Mendenhall, 446 U.S. 544, 554 (1980). During such a stop the officers are not required to inform the citizen that he or she is free to leave or refuse to answer as long as the totality of the circumstances do not indicate that cooperation is required. Id. at 555. The stop in this case clearly falls into the first category of police-citizen encounters. Unlike a typical traffic stop, this encounter did not involve Ranger Hardin pulling over or stopping Quitmeyer's vehicle because it was already stuck when Ranger Hardin approached the vehicle. Ex. A. at ¶ 5. At no time did he reach for his weapon.

The Supreme Court and the Ninth Circuit have long recognized that, beyond criminal investigation, police have a community caretaking function that justifies action without a warrant and without suspicion of criminal conduct. Cady v. Dombrowski; 413 U.S. 433, 447 (1973); United States v. Bradley; 321 F.3d 1212, 1214-15 (9th Cir. 2003). Police officers acting under the community caretaking function need only point to specific and articulable facts to justify their reasonable belief that a citizen might need aid and show that the action is not primarily motivated by intent to arrest and seize evidence. Under the community caretaker doctrine, the reasonable suspicion must be of need, not criminal activity. See People v. Ray 21 Cal.4th 464, 471 (1999) ("Officers view the occupant as a potential victim, not as a potential suspect.") Here, Ranger Hardin approached Quitmeyer's vehicle after it became clear that she was stuck. Ranger Hardin then engaged the Defendant in conversation and asked for her identification. Such a stop

was completely consistent with a consensual police-citizen encounter that does not rise to the level of a seizure.

B. Even If The Stop Was A Result Of Means Intentionally Applied, The Stop Was Not A Seizure Despite Quitmeyer's Belief That She Was Not Free To Leave The Area, Since This Belief Was Not Objectively Reasonable.

While Quitmeyer may now claim that she did not believe she was free to leave the area, (Def. Mot. Ex. B P.2), an examination of the totality of the circumstances of the incident suggest that she was not seized because this belief is not reasonable. A person is seized "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554.

The Defendant argues that her belief was reasonable because the "encounter had at least three indicia of a seizure: 1) the officers use of a loud authoritative voice, 2) his persistence after Ms. Quitmeyer's refusal to comply, and 3) his resort to physical contact with her vehicle." (Def. Mot. 5:8-10).

With regards to the first suggested indicia, Ranger Hardin does state that he gave a loud verbal warning for Defendant to stop her vehicle. However such a statement does not automatically mean that a seizure has occurred. See Id. ("Examples of circumstances that might indicate a seizure...the use of language or tone of voice indicating that compliance with the officer's request is compelled") (emphasis added). Defendant has failed to show that the warning was given in a manner that would indicate that compliance was compelled. All we know about the statement was that Ranger Hardin asked Defendant to stop and that he did it in a loud voice. Ranger Hardin could have given this command as part of his attempt to assist Quitmeyer in freeing her vehicle from its trapped position. Even more importantly this statement was moot since Quitmeyer's vehicle was already stopped by the barriers. The statement was not a command indicating that Quitmeyer could not leave, but a statement that she should stop rocking her car back and forth since it was ineffectual in getting the vehicle out from between the barrier and the ditch. Finally, based on the fact that Quitmeyer continued to rock the car back and forth until Ranger Hardin knocked on the window to get her attention (and then she

immediately stopped), Ex. A at ¶ 9-10, it is likely that Quitmeyer never heard Ranger Hardin ask her to stop the vehicle. If she never heard the command then it could not play a role in her claimed belief that she was not free to leave.

With regards to the second suggested indicia, Defendant claims that Ranger Hardin's persistence in asking her to stop her vehicle means that a seizure occurred. However, unlike in the case cited by Defendant, Morgan, 997 F.2d, Quitmeyer never refused to comply with the instruction. In Morgan, the passenger affirmatively and unequivocally refused to go with the officer and the officer repeatedly ordered Morgan to come with him and even physically grabbed him. The Court's decision was based on the fact that "[w]hen a citizen expresses his or her desire not to cooperate, continued questioning cannot be deemed consensual." Id. at 1253 (emphasis added). In the instant case, Quitmeyer never expressed her desire not to cooperate. It would have been completely reasonable for Ranger Hardin to believe that Quitmeyer did not hear his request for her to stop the vehicle and therefore was not repeating his request in order to compel her to obey, but to get her attention. In fact, once Ranger Hardin spoke directly to Quitmeyer, she responded immediately and there was no expression that she would refuse to cooperate. This is in direct contrast to the other case cited by Defendant, Johnson v. Campbell. 332 F.3d 199 (3d Cir. 2003), where a driver was found to be seized after the officer directly asked the driver to roll down the window and officer repeated the request after the driver refused. Defendant's characterization of Ranger Hardin's actions as analogous to the actions of the officer in Morgan and Johnson, is inaccurate because Ranger Hardin's repeated requests to stop the vehicle were not in response to an expression by the Defendant that she would not cooperate.

With regards to the third suggested indicia, Defendant claims that Ranger Hardin's physical contact with the vehicle means that a seizure occurred. The physical contact that Defendant refers to is Ranger Hardin tapping on the passenger side window. Ex. A at ¶ 10. The Defendant has tried to analogize this "physical contact" to the type of physical contact referred to by the Ninth Circuit in United States v. Sokolow, 831 F.2d 1413 (9th Cir. 1987), rev'd on other

grounds, United States v. Sokolow, 490 U.S. 1 (1989). This is a poor comparison since the physical contact dealt with in that case was contact that physically restrained the person's movement. In no way did the physical contact of tapping on the window restrain Defendant or her vehicle and therefore the physical contact in this case is not the kind that the Ninth Circuit saw as indicative of a seizure in Sokolow.

The encounter in this case did not have the indicia of a seizure. The encounter consisted entirely of Ranger Hardin knocking on the window of Quitmeyer's vehicle and asking to see her driver's license. This encounter had none of the coercive indicators of a seizure as described by the Supreme Court in Mendenhall, 446 U.S. at 554 ("Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled"). The Court is very clear that "[i]n the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." Id. at 555.

A reasonable person in Quitmeyer's circumstances would not have believed that she was not free to leave and therefore it was not a seizure requiring reasonable suspicion until Ranger Hardin observed signs of intoxication which gave him reasonable suspicion that Quitmeyer was driving while under the influence.

C. Even If The Encounter Was A Seizure, There Was Reasonable Suspicion To Support Ranger Hardin Making the Stop.

1. Reasonable Suspicion Based On Erratic Driving.

Even if the Court determines that the encounter between Ranger Hardin and Quitmeyer did rise to the level of a seizure then, as Defendant admits, this seizure would only have to be supported by reasonable suspicion of criminal activity. (Def. Mot. 5:16-23) While Defendant asserts that the only thing that Ranger Hardin observed was "a lost driver executing a series of legal U-turns," (Def. Mot. 6:4-5), the evidence does not support this statement.

Ranger Hardin had reasonable suspicion to stop Quitmeyer because her behavior in operating

the vehicle was erratic. Quitmeyer drove her vehicle into an area protected by a series of security barriers stacked in an overlapping pattern. Ex. A. at ¶ 4. Quitmeyer was unable to navigate the curved road created by the barriers and attempted to turn around half-way through the barriers. She was unable to execute the turn necessary to leave the area and became "wedged" between the ditch and the barricade. She then proceeded to rock the car back and forth repeatedly until contacted by Ranger Hardin. Ex. A. at ¶ 5. Under the case that Defendant cites, United States v. Fernandez-Castillo, 324 F.3d 114 (9th Cir. 2003), reasonable suspicion of intoxication can be based on erratic driving behavior even if that driving behavior is legally permissible. Similarly, the Supreme Court found in United States v. Arvizu, 534 U.S. 266 (2002), that officers had reasonable suspicion to stop a mini-van even though the only basis for the suspicion was conduct that could individually be "susceptible to innocent explanation" Id. at 276, (in Arvizu the innocent explanation was a family on a vacation). The Court went on to say that "[a] determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct" Id. While the erratic driving of Quitmeyer could have had the innocent explanation put forward by Defendant in her motion, it also was sufficient to give rise to reasonable suspicion that Quitmeyer was operating her vehicle while intoxicated under the rule from Fernandez-Castillo.

2. Reasonable Suspicion Based on Violation of a Closed Area.

Even if Ranger Hardin did not have the above discussed reason to stop Quitmeyer, his stop would have been valid because there was reasonable suspicion that the vehicle was in a closed area and could be involved in terrorist activity. Ranger Hardin observed the vehicle approaching and crossing the security barrier surrounding the north anchorage of the Golden Gate Bridge. Ex. A. at ¶ 7. As one of the most prominent sites in San Francisco, if not the United States, the Golden Gate Bridge is among the top potential targets for terrorist activity. The National Park Service is empowered to close certain areas to public use. 36 C.F.R. § 1.5(a)(1). Violating a closure or access restriction is prohibited. 36 C.F.R. § 1.5(f). See also 33 C.F.R. § 165.1187 (Establishes security zones in the water surrounding the Golden Gate Bridge for national security

reasons since the Bridge is a high visibility target). The National Park Service lists the Golden Gate Bridge anchorage and pylons as one of the areas closed to public entry, except when accompanied by a park official, or when the Superintendent authorizes entry closure. See Superintendant's Compendium of Designations, Closures, Permit Requirements and Other Restrictions Imposed Under Discretionary Authority, attached hereto as Exhibit B, P. 4. Observing a vehicle approach the north anchorage of the Golden Gate Bridge, Ranger Hardin had reasonable suspicion that the vehicle was violating a restricted area. Just as in Arvizu, activity that has innocent explanations can give rise to reasonable suspicion of criminal activity. This is particularly true when the location of the activity adds to the likelihood that criminal activity is underfoot. In Arvizu, the vehicle was suspected of smuggling illegal immigrants in part because it was driving in an area known for smuggling. Similarly in this case, the location of the vehicle added to the suspicion that it was in a restricted area and could be involved in terrorist activity. Therefore Ranger Hardin's actions in investigating why the vehicle was in the area of the North Anchorage was reasonable based on his observations and the location of the encounter.

As discussed above there are multiple different criminal activities for which Ranger Hardin had reasonable suspicion to believe the vehicle he observed was engaged. As the Supreme Court ruled in United States v. Whren, 517 U.S. 806 (1996), a court should not look into the subjective intent of the officer making the traffic stop in determining whether the stop was reasonable; the only question is whether there is reasonable suspicion of some criminal activity. Once this threshold is met, a traffic stop is permissible under the Fourth Amendment even if it gives rise to an arrest for another crime. Id.

D. Since The Encounter Was Not A Seizure, And Even If It Was A Seizure, It Was Supported By Reasonable Suspicion, The Subsequent Evidence Gathered Should Not Be Suppressed.

Since the encounter between Ranger Hardin and Quitmeyer did not violate her Fourth Amendment rights, the evidence collected by Ranger Hardin should not be suppressed. Once Ranger Hardin observed the symptoms of intoxication, her speech and appearance, he had

reasonable suspicion that she was driving while under the influence. Defendant does not challenge that Ranger Hardin's actions in performing the Field Sobriety Tests was improper since there was clearly grounds to reasonably suspect that Quitmeyer was driving while under the influence once Ranger Hardin contacted Quitmeyer. Therefore, once the Court determines that the initial contact was not unreasonable, either because it was not a seizure or because it was a stop supported by reasonable suspicion, there are no grounds to exclude the evidence of Quitmeyer's intoxication.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court deny Defendant's motion to suppress all evidence and statements arising from the encounter between Ranger Hardin and the Defendant.

Dated: 8/13/07

Respectfully Submitted

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/s/
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